INFORMATION LETTER

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CANNING INDUSTRY REPRESENTATIVES TESTIFY ON PRICE ACT EXTENSION BEFORE HOUSE BANKING COMMITTEE

Evidence is Presented by Chairman of N.C.A. Planning Committee and Association's Counsel

On May 2, 1944, Mr. H. T. Cumming, the Chairman of the Association Planning Committee, and Mr. H. T. Austern, of Association counsel, appeared before the House Banking and Currency Committee which is considering the bill to extend the Emergency Price Control Act and the Stabilization Act of October 2, 1942.

In view of general interest in this subject, comprehensive excerpts from the testimony and the Committee questions and answers are set forth below:

MR. CUMMING. The National Canners Association represents and speaks for 2,800 canners of fruits, vegetables and fish. They conduct an industry that is distributed over the entire United States, and one that is of vital importance in peace time, and doubly so in time of war. Its importance at the moment may be appreciated when one considers that from 35 per cent to 50 per cent of its output is set aside for the armed forces and Lend-lease. This industry, because of its size and importance, is very much concerned with price control. Its productive capacity is closely related to price control.

We of the industry, in spite of the difficulties we have had with the many phases of price control, definitely favor the extension, for one year, of the Emergency Price Control Act of 1943. That being so, it must be obvious that we consider the advantages to have outweighed the difficulties.

Those amendments that we shall propose largely refer to administration. They aim to help the administrators more accurately to administer the Act. They in no way alter the fundamental purpose of the Act.

Some of the difficult problems of the past two years have been overcome; others remain to be overcome.

It is fair to say that the industry has suffered in the past, and still is suffering from the inability of the Office of Price Administration to issue maximum prices early enough. This is a highly seasonal business and failure to have maximum prices on time tends to reduce production and it tends to force canners to take unfair and unreasonable risks.

It is equally fair to say that the industry has suffered from the failure of the Office of Price Administration to handle individual and area hardship cases expeditiously.

MR. BROWN. Right there, Mr. Cumming. They do not notify you in time? You do know now what the ceiling prices are of all canned foods, do you not?

MR. CUMMING. For this coming season, no.

MR. BROWN. You do not know for this coming season?

MR. CUMMING. No, and we don't expect to know for six or eight weeks anyway, and yet we have contracted, of course, for our raw materials and taken on a great many obligations in preparing to go ahead, but we have no certainty whatever as to what the prices are going to be.

MR. BROWN. Do you not presume that they will be the same ceiling prices that they were a year ago?

MR. CUMMING. No, we do not.

(Continued on page 8200)

1944 SUPPORT PRICES; SPINACH FOR CANNING

WFA Designates 1944 Season Schedule that Will Apply in 17 States

With abundant supplies of spinach available in several producing areas, the War Food Administration on May 3 announced the support price schedule for spinach for canning designed to assure fair returns to farmers who grow or are growing spinach under contract with certified canners.

The announcement is expected to encourage canners in Virginia, Maryland, New Jersey, and Pennsylvania to start operations immediately and thereby take advantage of the abundant supplies of spinach in these areas.

Meetings were held in Baltimore on April 28 with canners, growers, Office of Price Administration and WFA officials for the purpose of facilitating the can-

(Concluded on page 8210)

SEASONAL AVERAGE GRAPEFRUIT COST DETERMINATION

Provisions of CCC Payment Program Specified in WFA Amendment

The method for determination of seasonal average area grapefruit costs under the Commodity Credit Corporation grapefruit juice payment program has been amended by the War Food Administration. Provisions for making this determination are specified in Amendment 2 to CCC Grapefruit Juice Form 1, of which the amended sections 249.7 and 249.8 are as follows:

§ 249.7 *Determination of seasonal average area fruit costs.* On or before June 15, 1944, each eligible processor who elects to adopt the seasonal average area fruit cost basis pursuant to § 249.6 hereof, shall report to Commodity the quantity, if any, of eligible grapefruit juice packed by such eligible processor during each month of the period from October 1, 1943, to May 31, 1944, both dates inclusive, and sold or held for sale to government agencies. As soon as practicable after May 31, 1944, and after receipt of the above-mentioned report, Commodity shall determine with respect to such eligible processor on the basis of the applicable monthly area fruit costs determined pursuant to § 249.5 hereof (or such cost as may be required by the provisions of § 249.8 hereof to be used in lieu of the monthly area fruit cost in this computation) for such period, weighted according to the quantity of eligible grapefruit juice packed by such eligible processor during each month of such period less the quantity, if any, of eligible grapefruit juice packed in such month sold or held for sale to government agencies, such eligible processor's applicable weighted average seasonal delivered cost (herein called "Seasonal average area fruit cost") per net ton in respect of grapefruit delivered to such eligible processor's plant or plants in each such area for processing into eligible grapefruit juice during such period.

Section 249.8 (9 F. R. 628, 1479) of the offer is amended by amending the last sentence thereof to read as follows:

In the event any eligible processor's weighted average delivered purchase cost for grapefruit purchased on a fixed price basis for processing into eligible grapefruit juice in respect of any month during the term of this offer (whether such eligible processor elects to operate

on a packing month basis or on a seasonal average area fruit cost basis) is less than or in excess of the applicable monthly area fruit cost for such month, then (1) such weighted average delivered purchase cost or (2) 103 per cent of the applicable monthly area fruit cost, whichever of said two costs is the lower (such lower cost being herein called the "Alternate cost"), shall be used in lieu of the monthly area fruit cost in respect of the grapefruit so purchased: (1) in determining the rate of payment under this offer for such month if such eligible processor has elected to operate on the packing month basis, and (2) in determining the seasonal average area fruit cost if such eligible processor has elected to operate on the seasonal average area fruit cost basis: *Provided, however,* That in the event the alternate cost for any period during the term of this offer shall be in excess of the applicable maximum or less than the applicable minimum costs stipulated in § 249.5 hereof, then such applicable maximum (or minimum, as the case may be) shall be used in lieu of the alternate cost or monthly area fruit cost in making the two specified determinations.

Persons acting in reliance upon the offer shall do so in accordance with and subject to the offer as so amended in respect of all eligible grapefruit juice packed by them during the term of the offer with respect to which payment is sought from Commodity.

Evaporated Milk Committee

Members of the Evaporated Milk Industry Advisory Committee who met recently in Washington with War Food Administration officials, stated that the industry probably would be able to meet the record allocation for evaporated milk for the year 1944, 76 million cases, as compared with approximately 71 million cases produced during 1943. Container and manpower shortages and the tight situation with regard to warehousing space, committee members said, would be the most difficult problems to solve.

Profit Data Cited by Murray Is Not Basis for Use by OPA

Press reports of the appearance of Philip Murray, president of the Congress of Industrial Organizations, before the Senate Banking and Currency Committee, which is considering the extension of the Emergency Price Control Act, accredited him with saying—

"An OPA study of the profits of food corporations shows that during the war period these profits have soared to a point that they represent the sorriest chapter of the war program. Wholesale food grocers realized twice as much on every dollar of sales in 1942 as in 1939. Sales were up 43 per cent, but profits before income taxes rose over 200 per cent.

"Profits before income taxes of food and vegetable canners were five times as great in 1942 as in the years 1936-1939 on less than twice the prewar volume of sales. . . ."

Since the quoted statements concerning the canning industry were said to have been based on an OPA study, Counsel for the Association addressed a letter to Jean F. Carroll, Director of the Food Price Division, asking him certain questions regarding this study.

Mr. Carroll's reply, dated May 2, incorporates these questions and his replies to them, as shown below:

Question 1. If there is any such study prepared by the OPA, what group of canners does it cover; how many out of the total number in the industry; what percentage of the pack of the various fruits and vegetables packed in each producing area; and does it include returns from any operations or activities other than fruit and vegetable canning?

Answer: The Research Division study in question was prepared for staff use on the basis of available profits reports in the field of fruit and vegetable canning. This study was divided into two sections:

(1) Profits, 1936-1942, of 39 fruit and vegetable canners, reporting continuously since 1936, and

(2) Profits, 1941 and 1942, of 58 canners including additional companies which reported for 1941 and 1942, but not for all of the prior years.

These 58 canners had combined sales in 1941 equivalent to about 40 per cent of the estimated value of the total pack in that year. The three largest concerns accounted together for over 20 per cent of the industry's total output. The 58 corporations are well distributed geographically, and the proportion of vegetable to fruit volume is representative of their relative importance in the industry. Half of the companies packed fruits and vegetables exclusively, and none of the others had less than 50 per cent of their sales accounted for by these two groups.

Question 2. What is the relation between this reported study and the current detailed survey being made by the OPA in the canning industry which you announced in Chicago and in which the cooperation of the industry has been successfully enlisted?

Answer: It was apparent from the limited coverage of the study and its lack of detail that it could not serve adequately in the pricing of canned fruits and vegetables as a guide to the economic position of the industries affected. It was because of these deficiencies in the data that we undertook broad survey of the canning industry to ascertain as exactly as possible the cost and earnings position by product and by district.

In our present study, as you know, we have sent out accountants into the plants of 280 canners and other processors of fruits and vegetables. This study is being conducted by the Food Price Division and is under the direction of Mr. Richard Heflebower, Division Economist, Miss Dorothy Bacon, Assistant Division Economist, Mr. John Gismond, Price Executive, Fruit and Vegetable Branch, and Mr. Carl Lovegren, Head of the Processed Fruit and Vegetable Section.

Question 3. If there is any such study, is it regarded as a proper basis for maximum price regulations and is it to be used for this purpose?

Answer: The study of the Research Division will not be used as a basis for our maximum price regulations, and was never intended for such a purpose. Despite the inadequacy of this study for purposes of price determination, it should be pointed out that it has provided us with useful information concerning the general health of the canning industry taken as a whole. On this score, I think that the study is sufficiently representative to warrant the general conclusion that the industry experienced a vast improvement in its economic position during the period covered.

In a preliminary analysis which we made and which was later approved by the Price Administrator, the War Food Administrator and the Director of Economic Stabilization, we concluded that the profits of the canning industry in the period which we use for most industries as our base, (namely, 1938 to 1939, inclusive) were not representative and could not be used as a fair base for calculating our 1944 pack price. For this reason, and in order to achieve maximum production, we decided to use the crop years 1940 to 1941 as the base for the canning industry. Mr. Brownlee and I announced this to the canning industry at its processors' conference in Chicago, in February.

Question 4. If any such study exists, has it ever been made public?

Answer: The study on canner profits was the first one to be issued following the decision that this series of studies should be restricted to internal use. It has therefore never been made public. A major factor in the decision not to make these data available outside Government was the likelihood that their limitations would not be properly observed. While our policy in this respect has been clear, it has not proved possible completely to eliminate the high spots of these reports from getting some circulation.

To the best of my knowledge this study to which you refer was never made public and, therefore, cannot be interpreted by anyone as being an official OPA study. If any copies of the study were given to or shown to people outside OPA, it was contrary to the instructions of Mr. Bowles.

SHIP SUPPLY FOODS

Schedule of Designated Items under WFO-74 is Changed by WFA

The War Food Administration has made revisions in War Food Order No. 74 (formerly designated Food Distribution Regulation No. 3) which requires that ship suppliers be licensed in order to buy set-aside, restricted and designated foods for ultimate resale to ship operators.

Effective May 1, concentrated citrus juices were deleted from Schedule C (designated foods). Dried beans and peas also have been removed from Schedule C. Designated foods are those set-aside foods which are in particular short supply and therefore require special clearance before ship suppliers can obtain them.

The revised Schedule C of WFO 74-2 follows:

SCHEDULE C

	Applicable FDO No.
Designated foods:	
Canned fish and shellfish (Limited to Maine and California sardines, salmon, shrimp, mackerel)	44
Canned fruits and fruit juices (Limited to apples, apricots, berries, red sour pitted cherries, figs, fruit-cocktail, grapefruit, peaches, pears, pineapple, orange juice, grapefruit juice, orange and grapefruit juice, and pineapple juice)	22-4
Canned vegetables and vegetable juices (Limited to asparagus, lima beans, snap beans, beets, carrots, corn, peas, pumpkin and squash, spinach, tomatoes, tomato puree, tomato paste, tomato juice, and tomato catsup)	22-4
Dehydrated vegetables (Limited to beets, cabbage, onions and rutabagas)	30
Dried fruits (Limited to apples, apricots, pears, peaches, prunes, and raisins)	16

May Wholesale Inventory Factor

The processed foods wholesale inventory factor for the reporting period which began April 30 and will end June 3, is set at 3.5 by the Office of Price Administration, under the terms of Amendment 10 to Second Revised Supplement 1 to Revised Ration Order 13. The old factor, which was four, had been used since January 30, when the "February" reporting period began. A reporting period lasts approximately a month.

The factor is used to determine the wholesaler's maximum allowable inventory—the point value of the physical inventory of processed foods he is entitled to have at any one time during the reporting period.

The factor is determined by the supply of processed foods available for distribution. When the production curve of processed foods is down, the wholesale inventory factor decreases. When the production curve is upward, it increases. In this way it is possible to insure fair distribution at the wholesale level of the supplies of processed foods in the hands of packers.

Fisheries Hearing Announced

The Committee on Merchant Marine and Fisheries will hold a public hearing at 10 a. m., May 18, on H. R. 2809, a proposal to amend section 511 of the Merchant Marine Act, 1936, as amended. (Ship construction reserve fund.)

Witnesses have been requested to notify the clerk by letter at least a day in advance of the hearing of their desire to testify so that a list of witnesses may be prepared. Written statements for the record from persons other than witnesses should be submitted a day in advance. Amendments to be proposed during the hearing should be submitted to the reporter in duplicate.

Canned Meat and Fish Made Ration-point Free

Canned meat and canned fish were made point-free at midight, May 3, through the Office of Price Administration order which reduced to zero point values all meats except steak and beef roast.

In line with the requirement that the trade shall take inventory of each rationed meat item whenever its point value changes, OPA, on May 4, pointed out that each member of the trade must take inventory as of the close of business, May 3, of any rationed meat item whose point value was affected by the action.

The inventory is necessary, OPA said, because if point values are restored later on any or all of the items now at zero point value, members of the trade will need the inventory records to support possible requests for allowable inventory adjustments or for recovery of point losses caused by changes in point values.

OPA also pointed out that the items that went to zero at midnight May 3 are still technically under rationing, and therefore that all requirements relating to reporting and transferring of the foods must continue to be observed. Continued regular reports from the trade are needed, OPA said, for use in making later decisions concerning point values.

PRIORITY APPLICATIONS

Revised Instructions Issued for Filing WPB Form 541 (Formerly PD-1A)

Firms and individuals who normally apply for priority assistance on WPB Form 541 (formerly PD-1A) for the acquisition of equipment or materials other than controlled materials are advised to follow the revised instructions for the filing of this form, the War Production Board has announced.

The amended instructions became effective May 1, and apply to the use of the form only. No change is made in the form itself or in the information asked for.

Applicants are advised to continue to use the old form (identified by the printing date 7/6/43, which appears in the upper left corner), but should observe the revised instructions.

Separately printed instruction sheets containing the revised instructions for the filing of WPB Form 541 are now available at all WPB regional or district offices. The instructions follow:

Applications for Project Ratings

In line with certain exceptions permitted under Direction 2 to Conservation Order L-41 and Controlled Materials Plan Regulation 5 and 5A allowing the installation without specific authorization of minor capital additions and processing equipment or machinery, the instructions on page 4 of WPB Form 541 under the heading "Applications for Project Ratings" has been amended to read:

"Under Conservation Order L-41, authorization is required to begin any construction, including additions and installations, the cost of which is above certain dollar limits. Below these dollar limits, construction may be carried on without any specific authorization from the War Production Board. WPB Form 541 may be used to secure preference ratings on materials or equipment for construction which is below the dollar value requiring authorization under Order L-41. For all construction exceeding the dollar limits specified in Order L-41, WPB Form 617 (formerly PD-200) must be filed for authorization to begin the construction and for a preference rating and allotment of controlled materials."

Applications for Equipment

Many WPB orders require specific authorization for the acquisition, sale or delivery of equipment to be obtained on WPB Form 1319 (formerly PD-553). The WPB Form 1319 instruction booklet (obtainable at any WPB office) lists the items released on the form, and these items should not be applied for on WPB Form 541. If a preference rating is required, it will be assigned on WPB Form 1319 and a separate application on WPB Form 541 is not required.

FISH OIL REGULATIONS

Set-aside Amounts Specified for Crude Sardine, Menhaden; Government Releases its Reserves

Producers of crude sardine and menhaden oil will set aside approximately one-third of their production after May 1, for uses classified as essential by the War Food Administration, but the remaining 1944-45 fish oil production, with three specific exceptions, may be used without restriction.

The exceptions involve the use of fish oil in the manufacture of feeds and vitamin feeding oils; and the limited use of seal oil and Pacific Coast herring oil. The WFA announcement lists the essential uses for which sardine and menhaden oil will be set aside.

At the same time WFA announced the release of approximately 8 million pounds of 1943 crop fish and marine-animal oils remaining in government reserves.

Most of this fish oil, comprised of menhaden, sardine, and Alaska herring oils, was released April 24 for the more essential war uses, which did not include several uses permitted by the fish oil order (WFO-60). These more essential needs having been supplied, WFA now makes the remaining portion of the oil available for all permitted uses, as follows:

1. Approximately 3 million pounds of menhaden oil for all uses permitted by WFO-60.

2. Approximately 2 million pounds of sardine oil for all uses permitted by WFO-60, except that first consideration will be given to manufacturers of vitamin feeding oils.

3. Approximately 750,000 pounds of Alaska herring oil for leather tanning, metal-working compounds, lubricants, and metallic soaps. WFO-60 restricts Alaska herring oil to these uses.

Congress Authorizes Survey of United States Fisheries

Congress, on May 2, adopted a resolution (S. J. Res. 112) authorizing a survey of the deep sea and fresh water fishing resources of the United States for the purpose of developing a national fisheries program. Representative Schuyler Otis Bland of Virginia, Chairman of the House Committee on Merchant Marine and Fisheries, who was one of the sponsors of the resolution, stated that there has never been such a national fisheries program and that the survey was necessary to enable the collection of data in order to deal with the problem of fisheries during the peace conference and thereafter. Chairman Bland stated that the fisheries problem would be one of the greatest problems to be settled during the peace conference and that the last thorough investigation of the national fisheries was made in the last century.

The resolution requires that the survey shall be conducted by the Fish and Wildlife Service of the Department of Interior which shall complete the investigation by not later than January 1, 1945. The scope of the investigation includes investigation of all phases of the United States fishing industry and the existing regulations covering the industry, and the use of the fishing resources.

FRUIT RESTRICTION

WFA Order Limits Use in Production of Alcoholic Content Beverages

War Food Order No. 69-1 (originally issued as Food Distribution Order No. 69-1, and redesignated as War Food Order No. 69.1) has been amended.

As amended, the order restricts the use of 23 different varieties of fruits and berries in the production for sale of products containing an alcoholic content of 7 per cent or more by volume.

Fruits and berries restricted under WFO-69, as amended, include any variety, type, or form of fresh, dried, canned, frozen, or other processed or partially processed form, or the juice, of apples, apricots, cherries, currants, Concord grapes, dates, peaches, pears, pineapples, plums, prunes, blackberries, blueberries, boysenberries, dewberries, gooseberries, huckleberries, johnsonberries, loganberries, Olympic berries, raspberries, strawberries, youngberries, and such other fruits as the Director may designate.

Persons desiring to have particular lots of fruits or berries released from the restriction of WFO-69, as amended, should communicate with their local AAA committee or with one of the following regional offices, which with their regional directors are designated in the order as follows:

Northeast Region, OD, 150 Broadway, New York (7), N. Y.—Francis D. Cronin.

Southern Region, OD, Western Union Bldg., Atlanta (3), Ga.—Col. J. H. Palmer.

Midwest Region, OD, 5 South Wabash Ave., 1714 Mallers Bldg., Chicago (3), Ill.—E. O. Pollock.

Southwest Region, OD, 425 Wilson Bldg., Dallas (1), Texas—L. J. Cappleman.

Western Region, OD, 657 Pacific Bldg., 821 Market St., San Francisco (3), Calif.—Buell F. Maben.

Ground Fish Specifications for Purchase Program Amended

Offer of Sale Form PB-33 (Miscellaneous Canned Fish) has been amended by the War Food Administration to provide specifications which shall apply to all canned, ground fish offered under the current purchase program.

Subparagraph (a) of paragraph 4, Specifications, is made inapplicable and the following is substituted for it:

(a) (1) Fish used in the manufacture of this produce shall only be edible species in good edible condition. Heads and entrails shall be removed and fish shall be practically free from scales. Fish shall be sufficiently precooked before canning and coarsely ground so that the finished product will be reasonably firm and reasonably free from excess moisture and shall be of such consistency as to retain the shape of the can. No filler, condiment, liquid or other substance shall be added. Cans shall be sufficiently processed to insure sterility. Cans shall be filled as full as practicable. The average net content of the No. 300 (300 x 407) can shall be not less than 15 ounces. If larger sizes of cans are used, the net content shall be in the same proportion as the relative size of the can. Cans shall have a vacuum of not less than four inches. Canning shall be conducted in a sanitary manner and fish shall be canned according to sound commercial practice to produce an edible product.

The phrase "practically free from scales" shall be interpreted to mean that scales shall not cover more than 5 per cent of the surface area of the fish when prepared for grinding.

(2) Representative samples of the product offered shall be submitted with the offer as proof of ability of bidder to offer a product meeting specifications. These samples must be properly marked to identify them as to contents and canner.

Paragraph 5, Inspection, is inapplicable and the following is substituted in lieu thereof:

The Commodity Credit Corporation may require that the fish be packed only during the time that a representative of the War Food Administration or its designee is present and his decisions as to quality, sanitation and edibility will be final. The cost of such inspection and of issuing of certificates of inspection shall be borne by CCC except that there shall be deducted from the price named herein one cent a case to cover normal inspection costs. The seller agrees to furnish samples necessary for the inspection of the product without charge to CCC.

The offers of canned, ground fish submitted on Offer of Sale Form PB-33 may be submitted at any time prior to August 31.

WFA INVITES OFFERS

Announces Purchase Program Details for Fruits, Vegetables, Seafood

The War Food Administration announced May 1 that it will purchase through the Commodity Credit Corporation a number of miscellaneous commodities. Offers for the sale of these items, f.o.b. Mobile, Alabama, or f.o.b. New York, N. Y., may now be submitted.

Addressed to the Procurement Branch, Office of Distribution, WFA, they must be received at Washington 25, D. C., by 5 p. m. Eastern War Time, May 10.

Following is a list of the items requested by WFA:

	Quantity Cases	Can sizes
CANNED VEGETABLES:		
Tomato puree	25	24/No. 2½
Tomato puree	75	48/ 6-oz.
CANNED FRUITS:		
Fruit salad	200	24/No. 2½
Seedless grapes	75	24/No. 2½
Strawberries	125	24/No. 2½
Maraschino cherries	40	24/ 1-pint
CANNED SEA FOOD:		
Kippered herring	175	48/15-oz.
Oysters	40	48/ 1's
Clams	10	48/ 1's
PICKLES AND SAUCES:		
Hot sauce	60	60/ 6-oz.
Maggi seasoning	25	144/ 4-oz.
Kitchen bouquet	60	12/ 2-oz.
Tabasco sauce	15	24/ 2-oz.
Pickled onions	100	24/16-oz.
Sour mixed pickles	75	24/16-oz.
Sour mixed pickles	25	4/ 1-gal.
Sweet mixed pickles	50	24/16-oz.
Sweet mixed pickles	25	4/ 1-gal.
Gherkins	100	24/16-oz.
Gherkins	100	6/No. 10
Chutney (domestic)	50	12/ 1-pt.
Relish	35	12/16-oz.

Canned Soup Offers Invited

The War Food Administration announced on May 1 that purchases through the Commodity Credit Corporation are contemplated and that offers for the sale of canned condensed soup may now be submitted for 15,000 cases (20 per cent each oxtail and chicken noodle and 10 per cent each asparagus, tomato, vegetable, pea, scotch broth and chicken consomme with noodles), packed 48/1 (Picnic) cans per case.

Offers may be transmitted by letter or telegram addressed to the Commodity Credit Corporation, Procurement Branch, Office of Distribution, War Food Administration, Washington 25, D. C., not later than 5 p. m., Eastern War Time, May 8. Each offer must state: That the offer is subject to the terms and conditions of Announcement Awd-63; can size, number of each to case and number of cases offered; price per case f.o.b. cars or trucks at vendor's shipping point; full description of all packaging including net and shipping weight per container and cubic displacement of container; point of origin (present location) and originating carrier of each item offered; and earliest delivery date and rate of delivery.

W. G. CAMPBELL RETIRES

Commissioner of Food and Drugs Terminates 37-Year Career in Government Service

Walter G. Campbell, Commissioner of Food and Drugs, has retired from the Federal service under the voluntary provisions of the Retirement Act, bringing to a close a civil service career that began 37 years ago. He was originally appointed from a civil service register of food and drug inspectors in 1907, when the Federal Pure Food and Drugs Act first became effective.

Dr. Harvey W. Wiley, then Chief of the Bureau of Chemistry, selected Mr. Campbell as Chief Inspector. Mr. Campbell had already rendered effective aid to his native State of Kentucky in the enforcement of a State pure food law.

He organized the small staff of Federal food and drug inspectors on a nationwide basis and formulated plans for inspection operations. When the district system was established in 1914 by Dr. Carl L. Alsberg, then Chief of the Bureau of Chemistry, Mr. Campbell was appointed Chief of the Eastern District. Three years later he was promoted to the assistant chiefship of the Bureau of Chemistry, and was given wide authority to direct the enforcement operations.

After Dr. Alsberg's resignation in 1921, Campbell directed the law-enforcement operations for two years as Acting Chief of the Bureau, and later as Director of Regulatory Work for the Department of Agriculture. When the Food and Drug Administration was organized in 1927, Mr. Campbell became its head and, since 1933, has devoted his entire time and attention to the work of the Administration.

The Food and Drug Administration was transferred, in 1940, from the Department of Agriculture to the Federal Security Agency, and by Presidential order Mr. Campbell was designated as Commissioner of Food and Drugs.

Commissioner Campbell was largely instrumental in presenting the facts that led to the enactment of the Federal Food, Drug, and Cosmetic Act of 1938.

Export License Applications for Second Quarter of 1944

The Foreign Economic Administration proposes export license application limits for the second quarter of 1944 under a procedure similar to that offered to exporters of canned fruits and vegetables during the first quarter of 1944, as set forth in Comprehensive Export Schedule No. 13, page 112, item 4. These limits represent figures beyond which applications for licenses to export canned fruits and vegetables to the Latin-American republics involved may be, but are not likely to be, approved.

In addition to the commodities included in the present procedure, FEA is now extending these limits to cover dried beans and dried peas.

Exporters who have filed questionnaire Form FEA 392 (giving 1941 export figures) will be notified of application limits for the second quarter of 1944 based on their 1941 exports, as soon as they are established, states FEA.

Exporters of canned fruits and vegetables and dried peas and beans who have *not* supplied the Requirements and Supply Branch of FEA with 1941 export figures should show, when submitting individual applications in the second quarter of 1944, their export sales for 1941 for this commodity to the country of destination, so that their application limits may be ascertained. Exporters who have had no 1941 experience covering exports of canned fruits and vegetables and dried beans and peas should so state on their applications. The lack of any 1941 exports does not mean that license application will be rejected.

The suggested limits are offered to exporters as a guide in planning their work, and do not represent commitments from FEA.

Renegotiation Report Ruling

The War Contracts Price Adjustment Board ruled on April 28 that parent and subsidiary companies required to file renegotiation report forms (see INFORMATION LETTER No. 983, April 29, 1944, p. 8185) may file the form on a consolidated basis. The Board announced that each subsidiary must file the standard form of contractor's report, but it may complete the report by merely writing on it the statement that the required information is contained in the consolidated report filed by the parent company.

INDUSTRY REPRESENTATIVES GIVE TESTIMONY ON PRICE ACT EXTENSION

(Continued from page 8195)

THE CHAIRMAN. When do you make your contracts for this year?

MR. CUMMING. It varies according to the areas and according to the commodities, but we start in January, many of us, and contract for vegetables through the following months, way along up into the packing season.

MR. BROWN. Is there any particular reason why they cannot give you this information in time?

MR. CUMMING. There are a good many difficulties associated with prices because you have such a variety of products. The OPA has announced the method by which they intend to supply prices, and there is reason to assume that they are making every conceivable, reasonable effort to do it, but as I will show later, they are subject to other controls.

MR. CRAWFORD. Mr. Chairman, may I ask a question?

THE CHAIRMAN. Mr. Crawford?

MR. CRAWFORD. Suppose you came into my District where we have the sugar beet acreage, and the canning pea acreage, and the bean acreage, and the tomato acreage, which are highly competitive, and you are in there in the months of January and February, and you want to contract with me to grow 20 acres of two or three different kinds of crops that you can and process, and you cannot tell me what price you can pay me because OPA has given you no ceiling price under which you can operate. What sound basis is there for us to proceed to do business?

MR. CUMMING. Well, the fact is that in many of these major vegetables we can tell you what we will pay you as a grower because the Department of Agriculture has set up support prices, and we must needs pay those support prices, or higher, in order to be certified, and receive the advantages that come from certification—one reason is to share in a subsidy if provided.

So we can supply you as a grower with prices for raw material but we cannot tell what we are going to get for the finished product.

MR. BROWN. In other words, you would have to give him that price?

MR. CUMMING. Yes, surely. I think some of this will appear as I go on.

MR. CRAWFORD. Let me ask you this: On what sound basis can you pay me minimum fixed prices for a crop when you do not know what you are going to sell it for?

MR. CUMMING. Well, a lot of us ask that question. I think it is based on faith, and it is based on the experience of the past two years when we have been doing it. We suffered as a consequence at times; there is no doubt about it.

MR. CRAWFORD. Then if you have sufficient faith to proceed as a processor, and have a line of credit where you can go to the bank and get the necessary money with which to pay for the crops and process it, and put it in the warehouse, then I would say you are in pretty good shape. But supposing something goes haywire with your faith, or with your line of credit that the bank said they would give you, then where are you?

MR. CUMMING. Well, you face ruin, that is all.

MR. CRAWFORD. Then you haven't any sound basis on which to proceed?

MR. CUMMING. I think you can draw that conclusion; yes.

MR. CRAWFORD. That is what I wanted to find out, because I sit in on enough of these loans, so that if there is any sound basis, I would like to know what it is. I haven't found what it is yet.

MR. CUMMING. Of course, it can be said the OPA law establishes a basis for ceiling prices, which gives the processor certain reasonable guarantees and that can back up the processor's faith to a considerable extent, but certainly contracting for merchandise without knowing what you are going to sell it for is a questionable proceeding.

MR. CRAWFORD. Let me ask this one other question:

Suppose you had a ceiling price and I speak of vegetable canners of all kinds—large, small and medium. You have a support price and you have a ceiling price, and you are advanced a sufficient line of credit to help you get the goods in the can and in the case.

Hostilities cease. There is a general shuffle all the way around. Where is your protection?

MR. CUMMING. Well, it is said that War Foods is going to underwrite excess stocks. So far as I know, the program has not yet been produced. However, regardless of programs, if the supply is way in excess of the demand, it is apt to be reflected in the price we will eventually get for the merchandise which will be unfortunate.

MR. CRAWFORD. But you haven't any real support at the present time for a situation like that.

MR. CUMMING. Yes, we have, in some respects. The Government set-aside purchases will be purchased, at least to the extent of 90 per cent of the set-aside quantity or quantities. I think you can depend on that. But the surplus in excess of that, the civilian supply of merchandise, has yet to be protected through the form of an announcement of contract, and so forth, but I think it is the intention to do it.

MR. PATMAN. After all, you have faith in the credit of your country, and in the Government of the United States.

MR. CUMMING. Yes, sir. I intended to bring that out, when I referred to the effect of loan which makes for that faith.

MR. PATMAN. And based on that, you get loans from bankers and other financial institutions.

MR. CUMMING. If you are entitled to them—and on other scores also—not on faith alone.

MR. CRAWFORD. Suppose one of your canners goes to Bank A and he wants to borrow 80 per cent of the June 1st ceiling price on peas in the case, and the banker makes an advance loan of 80 per cent. What is there in the machinery that protects the banker against a substantial drop in price that would wash out the market 20 per cent, and what would protect the processor in making a loan of that kind, if the price should drop, say, 50 per cent?

MR. CUMMING. Well, I think only that which I have already referred to.

MR. CRAWFORD. That doesn't mean a thing to the banker because the banker can't collect that faith and credit to which you refer. And every man who sits on a board of directors in this country knows he can't. That is not the way you collateralize loans.

MR. CUMMING. That is true.

THE CHAIRMAN. It seems to me the Office of Price Administration is under great difficulty, too. It is hard to set a price on crops not yet produced, and which is regulated by supply and demand.

MR. CUMMING. Yes, except there is some measure there. We are operating under support prices for the raw materials, which are fairly clear.

THE CHAIRMAN. But it is hard to give you any definite idea of what the ceiling price will be until the crop is produced, isn't that true?

MR. CUMMING. No, they will provide definite prices preceding the actual pack, and those prices, as will be seen later, will be definitely based on prices that were in existence in 1941, written up according to a certain formula which, in the main, is very satisfactory.

MR. CRAWFORD. Do you go out and sell futures on your pack in excess of the set-aside orders?

MR. CUMMING. We normally do, but certainly in war times it is not the common practice because we don't have enough merchandise to sell futures. We allocate after we get the pack. I think that is the general practice.

MR. CRAWFORD. Then at the present time you are left without a futures hedge, aren't you?

MR. CUMMING. Yes.

MR. CRAWFORD. You can't even protect yourself on that.

MR. CUMMING. That is right.

MR. CRAWFORD. Let me ask one other question: Suppose a bank made a loan and it became necessary for the company to deliver the collateral in the form of case goods to the bank. Could the bank dispose of the stocks under present circumstances?

MR. CUMMING. Yes, I would think so.

MR. CRAWFORD. What price?

MR. CUMMING. Of course the bank has this degree of security; they know the customer to whom they loan the money has a market for his goods insofar as they are to be supported. That takes care of the set-aside without question, and if War Foods goes through with what it has said it will, there will be protection on other excess stocks of the major commodities.

Now, if the banker can know that the producer has protection, he may, in turn, conclude he has some, too.

MR. CRAWFORD. What is that other protection on the excess stock?

MR. CUMMING. War Foods has said it intends to pay a certain price relating to ceiling price for excess commodities, in other words, to support the canner and to encourage him to go ahead and pack this merchandise that is so vitally needed.

MR. CRAWFORD. Have you got a contract with the War Foods to that effect?

MR. CUMMING. Not yet.

MR. CRAWFORD. What form is that in?

MR. CUMMING. It is in the form of a press release, up to the moment.

MR. CRAWFORD. All right; take eggs, meat on the hoof, or canned foods stuffs in the can, any of those things, and I will just challenge you or any other processor to show me where that thing stands up.

MR. CUMMING. Of course we haven't had actual experience with it yet.

MR. CRAWFORD. And I will put the evidence right on the table here.

MR. BROWN. I am sorry I interrupted you. I amagine you would rather finish your statement.

MR. PATMAN. I don't care to think about any one questioning the Government carrying out its contracts. I think the Government has been trying to carry out these contracts, Mr. Cumming, through War Foods and every one else.

MR. CUMMING. I think certainly the answer to that is yes, but I can point out at least one where they have failed to carry it out.

MR. PATMAN. Well, where there have been disputes haven't they generally carried out their contracts?

MR. CUMMING. Certainly.

MR. PATMAN. So far as that press release is concerned, Mr. Crawford seems to think it won't stand up. The largest insurance corporation ever formed was the War Damage Corporation, and I guess the only assurance anybody ever had was a press release by Jesse Jones, and that stands up.

* * *

MR. CUMMING. It is equally fair to say the industry has suffered from the failure of the Office of Price Administration to handle individual and area hardship cases expeditiously.

It is admitted that maximum prices applied to an industry of such wide scope cannot possibly operate equitably in the case of all of the individual producers in the industry. Some canners are bound to suffer avoidable hardships. These canners are entitled to the attention of OPA. They have received it too seldom in the past.

In 1943 the canning industry was unnecessarily threatened with the imposition of compulsory grade labeling. It was forced to defend itself against the activities of those in OPA who were more concerned with what they considered reform than with securing maximum production in time of war.

It required an immense amount of time and energy to secure the passage of the Taft Amendment to the Act, which removed the immediate threat of compulsory grade labeling. That amendment aimed further to free the industry of the application by OPA of arbitrary government grades for the purpose of pricing.

According to the OPA interpretation of the amendment, it has failed to do that, so at the present time we are still forced to combat this issue. Mr. Austern will cover this subject in more detail later on.

In 1942 this industry was provided with a price structure that secured full production, and at the same time prevented undue price increases. National statistics support this statement. In 1943 OPA switched the signals and we found ourselves with the so-called flat regional prices on the major canned vegetable items.

These flat prices were unduly favorable to canners of some commodities in some areas, and at the same time, worked definite hardship on canners in others. They were far from equitable to canners and they forced consumers to pay prices that were often either too high or too low. As we approach 1944 we are faced with a method for pricing which, in many respects, promises obvious improvement, but in one respect imposes a definite handicap. I again refer to the compulsory use of AMA grades for the purposes of pricing.

You may feel that faulty administration alone is responsible for our predicament, but I will show you that is not the case. In this connection I should first like to emphasize that the canning industry has complete confidence in the present administrative pricing personnel of OPA. While there is reason to think that there are some misguided individuals in some branches of OPA, not directly concerned in the pricing,—people who, though sincere, lack understanding of the effect of their efforts—the personnel in the main is highly satisfactory.

Those pricing officials with whom the industry has contact are sincere, and experienced, and fair. But regardless of their intentions to administer the Act well, they are handicapped if their efforts are thwarted by others. If the Office of Economic Stabilization issues directives that defeat the aims of OPA officials, and fails to support their promises, they are helpless.

If OPA is forced into compromises with other agencies, as was the case last year in the handling of WLB approved labor increases, it cannot serve its intended purpose. So what may often appear to be administrative failure is more often a failure of some policy to coincide with or support the actions of OPA. Or it may be the result of conflict with some other agency of the Government. The solution of these difficulties may well be subjects for legislative consideration.

Canners are vitally concerned with the handling of subsidies and OPA's part in that procedure. Last year canners were forced to accept and there was calculated in their ceiling prices, what was in fact a grower subsidy. Canners to be certified for subsidy payment had to pay the growers of major vegetable crops prices arbitrarily increased by the Department of Agriculture.

The CCC bought the raw products from the canner and sold them back to the canner at a difference that was supposed to represent the increase in the price to the grower. In very many cases, in fact, most cases, the full increased cost was not returned to the canner by the operation of CCC Purchase and Resale Subsidy Program. Yet OPA in figuring ceiling prices, did it on the assumption that the canner would receive in the form of subsidy, the entire increased cost of his raw material.

One of two conclusions must be drawn: One, OPA passed the responsibility for fair treatment to CCC; or, two, OPA had no interest in preserving a fair and equitable margin for the canner as is required in the Act. The net result was that through the failure of OPA to discharge its full responsibility the canners suffered an injustice and a severe loss.

In March, 1943, OPA issued amendments to MPR 306 which established prices for canned peas, corn, beans and tomatoes. Presumably those prices reflected a fair and equitable margin. At that time increases in labor costs during the canning season could not be measured so OPA promised both in public statements and in official statements of considerations to various amendments, that adjustments would be made.

On the strength of these official commitments, canners contracted for raw material and proceeded to operate. That promise was kept so far as sales to the Government were concerned, but it was publicly repudiated in respect to civilian sales which represented more than two-thirds of the total production.

OPA's measure of the amount of the increased labor cost to the canner was exposed when it set up rates to be paid by government procurement agencies to cover this item. Those rates ranged

from 2 to 4½ per cent of the sales prices of the various commodities. To that extent, therefore, all sales to civilians failed to reflect a fair and equitable margin.

In an effort to correct this situation, the Office of Economic Stabilization finally issued a directive on December 4th that permitted canners to apply to CCC for relief under the hardship clause of the Purchase and Resale Contract. Relief, however, was conditioned on the canner not having earned in excess of 4 per cent on the sale of his entire operations, or 6 per cent on his invested capital. This whole procedure consisted of the denial of a promise and then a chiseling effort to make good. The application forms for this relief are not yet available—almost one year after the pack. Canners have labeled this performance an outright dishonesty.

If in the future subsidies are to be used, they should be paid at a definite rate per pound or per ton, and as in the case of butter and flour subsidies at specified intervals and without limiting conditions.

These experiences are related now, not primarily because they caused dollar losses to canners, but because they caused loss in confidence. OPA failed to discharge the responsibility imposed upon it by the Act.

This is significant at this time because the terms and handling of a possible subsidy in 1944 are under consideration. OPA has announced that its 1944 ceiling prices for the industry will be based on 1944 prices plus increases in costs from then through 1944, adjusted to reflect the average rate of profit earned by the industry in 1940 and 1941.

WFA is developing the subsidy contract that will be used.

CCC will make payments to the canners. Judge Vinson, it is understood, will determine the amount of the subsidy, having in mind the "hold the line" order.

With these four agencies having a part in the subsidy program, and recalling how the industry suffered from inter-agency failure to cooperate in 1943, this industry is entitled to some guarantee that last year's experience will not be repeated. If an amendment to the present Act is called for to gain this end, then it is recommended, and a suggested amendment is presented herewith.

"Sec. In promulgating any maximum price regulation under Section 2 of the Emergency Price Control Act of 1942, as supplemented by Section 3 of the Act of October 2, 1942, 56 Stat. 765, or any other law authorizing maximum price regulations, neither the Price Administrator nor any other person authorized to promulgate maximum price regulations shall, in calculating the return to any producer or processor, deduct the amount of any payment under any subsidy program covering the production or processing of any perishable or seasonal agricultural commodity or product thereof, unless prior to the issuance of such regulation there is in effect a definite legal obligation of the Commodity Credit Corporation or other authorized Federal agency, or offer to enter into such legal obligation, running to such producer or processor, to pay a specific sum per unit of raw material used in the particular product, equal to the amount deducted by the Administrator, at a specified time not more than six months following the completion of production or processing, and which obligation shall not be conditioned upon the performance of any other act or arrangement with respect to, or upon the profit or loss derived from, the production or processing of the commodity or product subsidized or of other agricultural commodities or products, or from any other operations of the producer or processor."

I should like to touch on the use of profit margins by OPA in the setting of ceiling prices for the industry.

Section 3 of the Act of October 2, 1942, provides that "In the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing".

While there is plenty of ground for complaint as to OPA's past performance in respect to profit margins, as has already been suggested, the general method of applying profit margins in 1944 as proposed by OPA, is not subject to criticism. OPA has displayed a reasonable and fair point of view. If that method is faithfully used this industry may not complain.

It should be pointed out, however, that in the application of that method, it is possible to destroy the direction that the Act contains in respect to margins. Such an application or interpretation is already threatened.

OPA has declared, speaking of profit margins, "So far as possible, we will try to maintain the historical net profit differences between products, but we may find it necessary to make some slight modifications in order to give incentive to items which the War Food Administration has indicated it will need."

While that may appear to be a perfectly reasonable thing for OPA to undertake to do, it is dangerous from the canner's point of view, and moreover, it assumes a responsibility on the part of OPA that it may not take under the Act. Who may safely determine what a slight modification of profit is?

Furthermore, it is not the responsibility of OPA, but it is that of the War Food Administration, using the incentives at its command, to secure what it needs. It is contended here that OPA should be prevented from attempting to influence the production of any one commodity through the application of arbitrary profit margins. A very simple change in the present Act, as suggested herewith, will do that, and I quote the suggested change:

"In the fixing of any maximum prices on any products resulting from the processing of any agricultural commodity, including livestock, a fair and equitable margin shall be allowed for such processing."

The law calls for amendment in another respect which is of vital interest to this industry and to others. The Director of Economic Stabilization, as well as other agencies of government, including OPA, issues scores of directives. While many of them may cover routine matters, some of them seriously affect the processors in this industry. Such directives should be made known to the industry and at the time issued.

Since Judge Vinson in the past has had and exercised certain veto powers over the acts of OPA, it may be presumed that he has or will issue a directive outlining certain conditions concerning the method of pricing canned fruits and vegetables in 1944. Any such directives should be made known to the industry and at the time price schedules are being prepared; not after they are issued. Last year Judge Vinson issued a directive on June 30th controlling the pricing of canned fruits that was not made public until December 4th.

In 1943 there was a series of directives issued by Judge Vinson on the subject of labor increases as related to ceiling prices in this industry that stretched over a period from June 14th to December 4th. These directives, though issued by Judge Vinson, definitely influence the activities of OPA in its control of this industry. The industry should know what they contain and at the time of issue, not weeks and months later, or perhaps never. We should be allowed to know all the rules of the game and when the game is being played. A very simple addition to Section 2 of the Act will accomplish this. A suggestion is herewith supplied.

Add to Section 2 of the Act of October 2, 1942, the following:

"Any power or authority conferred by this Act shall be exercised, either by the President or through any Department agency or officer, only through formal written orders or regulations which shall be promptly published in the *Federal Register*, but shall not otherwise be subject to the provisions of the Federal Register Act, 44 U.S.C. secs. 301-314."

It is my purpose now to defer to Mr. Austern, who is going to cover three subjects, one of which is particularly important to this industry.

MR. AUSTERN. Mr. Chairman, before turning to the two or three subjects with which I have to deal, I would like to supplement one point that was mentioned a moment ago, and it is this.

In 1944, the canning industry is in a far better position than it was in any previous year. Whereas in 1943 we did not know until very, very late in the season, March, April, and May, where we were going, in 1944 the present pricing officials of the OPA—who are more experienced and who appreciate the point made by Mr. Crawford that you have to have some notion of what the year will bring—those pricing officials in February of this year came to Chicago to the Processors Conference and stated as definitely as they could what the method would be for 1944 pricing.

In other words, gentlemen, it is rather different this year on that very important point.

These gentlemen have done the best they could up to this time, and with one exception, to which I will direct your attention in a moment, they have done a fairly satisfactory job of announcing their program. Of course there is many a slip sometimes between announcements and execution, but as Mr. Cummings suggested, we have full confidence.

I should like, very briefly, Mr. Chairman, to deal with two or three procedural amendments which our experience of the past two years leads us to recommend to this Committee.

The first of these is the suggestion that you incorporate in this Act an automatic statutory provision for relief in individual hardship cases.

That suggestion flows from this:

The OPA will entertain an application by an individual person or company only if its own regulation provides for such individual applications.

In many instances the regulation will work an undue hardship, or an inequity upon one company or person. Occasionally an OPA regulation will provide for that individual to ask the Administrator to give him relief. More often, and in the case of these canned food regulations, it does not.

In those cases, Mr. Chairman, I think the Committee knows that the OPA considers the individual application not as an application for individual relief, or adjustment, but as a petition to amend the entire regulation, and very often the individual's application is lost in the shuffle of considering whether the entire regulation industry-wide should be changed.

To remedy this situation we have taken the liberty of suggesting, and I believe there has been passed to the Committee, a new section to be added to Section 203.

I won't burden you now with reading it to you but I would like to say that it provides in substance that if a particular regulation works an inequity or a hardship on any individual he may file with the Administrator an application for individual relief, and the Administrator is to consider that application.

I might say in passing that this seems to be suggested by what the Supreme Court said in the *Yakus* case. The Supreme Court, you will remember, suggested that the Administrator probably would do that sort of thing.

Now, the only effect of this first suggested change is that it shall automatically become part of every regulation. By putting it in the statute you afford that opportunity to the individual who is suffering hardship or claimed inequity.

The second procedural suggestion relates to the matter of protests about which I am sure you have heard a great deal. You, of course, know that when a protest is filed the Administrator is in reality not required to do anything. He may deny it or grant it. That never happens. He may set it down for a hearing. So far as I know that has never happened.

Or, the law further specifies that he may provide an opportunity for further evidence, and that usually always happens, and the way it happens is this:

When an individual files a protest, after a time, three or four weeks usually, he receives from the OPA a long document which asks him from 30 to 91 questions, and asks him to file voluminous information. I can tell you from experience with these protests that it takes anywhere from 3 to 6 weeks to get the information and put it in the form which the OPA rules require it to be put, and to provide the number of copies. The apparent effort, Mr. Chairman, seems to be to delay and to wear down the protestant. We suggest that some provisions should be made to remedy that.

One other matter which I do not think has been presented to this Committee is that the OPA has evolved a series of very technical rules for the consideration of protests. One of those rules which has raised a great deal of difficulty in this industry is the rule that you can not question an amendment unless it lowers the price.

MR. BROWN. Unless it what?

MR. AUSTERN. Unless it lowers the price. Let me illustrate practically, because I think a concrete case will make this sort of a talk clearer. They issued a price for canned peas last year, for all container sizes, and for all varieties. Then there was a great deal of trouble and bickering and complaint, and after several months had elapsed they changed a lot of the prices, but not all of them. They changed the prices for some sizes and some varieties, but not for all of them.

The Committee of course knows that the relationship between one size can and another size can is very important, and when these regulations were protested, OPA took the position that as to those which had been reissued in the amendment without change, you were foreclosed from protesting; that the only ones you could talk about in a protest were those where the prices had been lowered, and of course, you couldn't talk about the ones where the prices had been raised. When an effort was made to point out in these protests that, as a business matter, what you get for all the container sizes collectively was the important thing, these technical rules which I have suggested are applied by OPA lawyers who were called into play, and the protests got nowhere on that point. With those two things in mind, we have suggested on page 3 of what I have given you, an amendment to Section (a) of Section 203, which would cure those two defects.

Finally, on this matter of protests, there is another little thing that happens that this Committee has not been told about, so far as I know.

You will remember that the statute provides in Section 203(c) that the Administrator may limit this protest proceeding to written evidence or affidavits, and very often, Mr. Chairman, here is what happens:

A man in good faith files a protest. After about four weeks, the OPA puts into the record a series of affidavits by Government officials or officials in the OPA. When you look at the affidavits, there are a lot of conclusions based on what is in the Government files.

Obviously, no private party is entitled to go to the OPA and go through the official files to see whether the man who prepared the affidavit did a complete job, and whether his conclusions are warranted.

The only way you can deal with this is to get the man before you and ask him questions, and so far as I know, Mr. Chairman, in no case has the OPA ever permitted a hearing on this point. We recognize the difficulties and we don't think a hearing on every protest is feasible. You would just create chaos in the administration of the protest machinery, but we do think, sir, that where the OPA puts in affidavits based on Government files, to which the protestant has no access, that in those cases there should be a public hearing, and on page 5 of these suggestions you will see that we have suggested this language:

That "upon showing that the fair and expeditious disposition of the protest requires that an early hearing be held, or that such hearing is necessary to afford adequate opportunity for rebuttal of any affidavit or other written evidence," then the OPA should afford the protestant a hearing.

I suggest to you, Mr. Chairman, that is fundamental fairness, and we think that should be put into the law.

As to court reviews, the questions have been explored, canvassed, argued and debated before this Committee at such length that I do not propose going into them.

I would like, if I may, very briefly to tell you what the legislative committee of the canning industry concluded after full consideration of the subject

of court review. I think we can summarize their views in three points:

In the first place, the committee feels that an appeal by a man questioning the validity of an OPA regulation should go to the Circuit Court of Appeals for the district in which he resides and conducts business. I am sure you have heard of that before and I see no purpose in threshing over the old straw. But that view is firmly held by those on the legislative committee.

Second, if the OPA seeks to prosecute or enjoin any one in the District Court, we feel that all defenses should be open. We feel that the regulation in such a case would be presumptively valid. It would be up to the defendant to show why it was invalid, and our feeling is if the OPA goes into a district court, then the OPA should be prepared to defend its regulation.

Summarizing those two points in short: If any one chases the OPA, they should chase them in the Circuit Courts of Appeal. On the other hand, if the OPA pursues some alleged violator in the District Court then the OPA should be prepared to sustain its regulation on all counts in the District Court.

The last court review point which I will report on but not argue, sir, relates to the treble damage and injunction suits, and it is our feeling that in those cases where there is an honest effort at compliance, but an inadvertent violation, that the treble damage suits and the injunction provisions should permit those two defenses to be made, and we suggest a clause in Section 205, which I will take the liberty of reading:

"It shall be an adequate defense to any suit or action brought under subsections (a) (c) or (f) (2) of this section, if the defendant proves that the violation of a regulation, order, or price schedule prescribing maximum price or maximum prices, was neither wilful nor the result of failure to take practicable precaution against the occurrence of the violation."

MR. BROWN. Right there, on these treble damage suits as applied to a man who technically violates a law when he does not intend to, I think that is a little severe, myself.

MR. AUSTERN. That is a question of policy for Congress. The treble damage action is believed to be a very effective sanction. Some think it is too drastic, some think it is not.

Our only point in that last suggestion is that we do not think the treble damage or the injunction suit should be applied in a case where the man has done everything possible to comply with an order or a price regulation and has not acted wilfully in violating it.

Certainly whatever you think of the treble damage suit, that does not seem to be the place for it.

* * *

Finally, we feel obliged to call to the attention of the Committee a current subject of controversy which may have serious consequences in 1944. The OPA has announced its pricing program for 1944 for canned fruits and vegetables. It has announced that the price ranges will be based upon so-called AMA grades.

These AMA grades are issued by the Agricultural Marketing Administration of the Department of Agriculture. This division of the Department of Agriculture is now part of the War Food Administration.

These government standards were originally issued for voluntary use in the warehousing of canned foods. Except to a slight extent they were not and are not used in the commercial buying and selling of canned foods. In short, they are Government standards and not the commercial grades used in the industry.

The effect of the OPA proposal, if carried out, will be to require every canner in the United States to pack against these government grades. In other words, the OPA is once again attempting for price purposes to measure against these AMA grades the canned fruits and vegetables grown and packed in forty-four States.

The reasons given by the OPA for this announced requirement are:

First, that it is necessary under their 1944 pricing plan to use AMA grades to establish the price ranges; and

Second, that it is also necessary to use them to provide effective enforcement.

I am informed that the Industry Advisory Committee (and you have heard a great deal about Industry Advisory Committees at these hearings), has unanimously stated to the OPA that it is opposed to the use of these Government grades, that such use is impracticable and unnecessary, that it will lead to distortions and inequities in the price ranges established, and that it is not only unnecessary for enforcement but will yield less effective enforcement of the price control regulations.

That was the unanimous report of the Industry Advisory Committee to the OPA on this point to which I am calling your attention.

The Committee will recall that this entire question of compulsory use of government grades—and the associated endeavor of former OPA officials to require grade labeling of canned foods and other commodities—has been the subject of much Congressional inquiry and Congressional action, by this Committee, as well as others.

The Committee will recall that last July Congress enacted the so-called Taft Amendment to the Price Control Act. That is now Section 2(j) of the Price Act.

This section has four separate limitations on OPA action:

It prohibits the Administrator from eliminating or restricting trade or brand names. It prohibits him from requiring the grade labeling of any commodity. It prohibits the OPA from standardizing any commodity unless no practicable alternative exists for effective price control. Lastly, it provides that the Price Act shall not be construed:

> "as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have been previously promulgated and their use lawfully required by another Government agency."

Now, Mr. Chairman, the canning industry insists that the proposed compulsory use of these Government grades—that is, the required price standardization of the entire country's pack of canned fruits and vegetables—is in direct violation of this part of the law.

The use of these Government grades is not lawfully required by any statute—such use is entirely voluntary. Consequently, the provision of the Taft Amendment that only specifications previously required by some other law may be used, is not met.

The voluntary use of these AMA grades is estimated not to have exceeded 5 per cent in the regular commercial buying and selling of these canned foods. Thus the requirement of the Taft Amendment, that only specifications or standards in general use in the industry may be employed, is not met.

The canning industry, and once again I am told the OPA Industry Advisory Committee, has repeatedly pointed out to the OPA that the regular commercial grades widely employed in the industry could be used for precisely the same purpose that the OPA is planning to use these AMA Government grades.

These commercial grades have been in general use in the industry for many decades. They have been used in sales contracts over the years. They are thoroughly understood in the trade—by canners, by food brokers, by distributors,—and are used by the long established arbitration boards whenever commercial disputes as to quality arise.

Next, Mr. Chairman, these commercial grades were used by OPA as the basis for price ceilings in 1942. Likewise, they were widely used as the basis for OPA prices on canned fruits and many canned vegetables in 1943. Similar commercial grades, based on trade usage, have always been and are still to be, used by the OPA for its price regulations on a wide variety of food products, such as coffee, tea, canned fish, dried fruits, frozen fruits and vegetables, jams and jellies, and the like.

On all of those they have always used, and they plan to continue to use, similar commercial grades, and on some

of those, Mr. Chairman, I might add there also are AMA grades in existence.

Only in the case of canned vegetables and canned fruits is it proposed to require the use of these Government grades for pricing.

Wholly apart from this question of legality, if the Committee please, there are many practical reasons why the required use of these Government grades will yield distorted or inaccurate price ranges and poor enforcement.

These reasons, as I have suggested, have been pointed out to the OPA. Without going into them in detail this afternoon, I would like to mention a few for the benefit of the Committee:

The AMA grades do not reflect important quality factors, such as flavor, which go to make up the value of canned goods.

The AMA grades use a numerical scoring system which is complete illusion and merely cloaks the personal judgment of the graders.

Experience has shown that graders differ even on the same product. This was perhaps not serious when these AMA grades were used for the original purpose of determining minimum collateral value for loan purposes; that is, when they were used for that purpose to which Mr. Crawford has referred, where the canner would have to hypothecate his pack in order to borrow money, and a minimum loan value was set up. That these AMA grades were illusory was not too serious. But these difficulties become serious when the grades are used to construct prices which measure, or which are supposed to measure, the exact value, or for enforcement of price regulations.

The AMA grades are variable and have been changed since 1941, the base period to be used for constructing the prices. Canners do not, and can not be expected to, relate what they packed in 1941 to a system of grades which they did not then use and which for many important products have changed since that time.

AMA grades are lacking for many commercial qualities which have been widely sold and which were widely sold in 1941 and are being packed today. What I mean by this is that where there are three commercial grades of Fancy, Choice, and Standard, there are often only Government grades A and C, and no middle grade.

An example of that is in tomato juice, which is a very widely sold canned product.

In the case of some products there are no AMA grades at all.

Thus it is obvious, at least it is obvious to us, that price ranges constructed against such Government grades will contain many errors and inequities when applied to all canned fruits and vegetables.

On the other hand, the base 1941 prices are readily related to the commercial grades used in the industry. As I have already said, these same commercial grades were used for OPA pricing in 1942, for many products in 1943, and are used and are to be used for virtually all other processed foods.

Apart from the objection to the use of these AMA grades in calculating maximum prices, the Industry Advisory Committee, I understand, has also reported to the OPA the practical reasons why price regulations based on these commercial grades are enforceable to a far greater extent than price regulations based on Government grades. I need not review the details of this discussion. But what is puzzling to us is this: You remember I mentioned that the commercial grades were used in 1942 and were used in 1943 on a great many products. Unless the OPA is prepared to prove that its price regulation has been ineffective up to date on all of these products, and will be ineffective in the future on those where they are going to use commercial grades, there appears to be no basis for its claim that for canned fruits and vegetables alone it cannot use the commercial grades used in the industry but must compel packing against Government grades.

As the Committee undoubtedly knows, there has been dispute among lawyers as to the scope and effect of the Taft Amendment. We think it is plain on its face.

The OPA lawyers think it is ambiguous and have made their own interpretation. This interpretation comes down substantially to the proposition that if the Administrator determines that no other practicable alternative exists for securing effective price control, he may price against these AMA standards and require their use for pricing purposes.

On that basis it seems clear to us that under any interpretation of the Taft Amendment, including that suggested by some OPA lawyers, the announced requirement for 1944 is invalid.

We need not burden the Committee with the legal arguments, but I will say first this: We find it difficult to see why the use of commercial grades, which worked in 1942, and which were and are to be used for these other products, can now be thrown out on the ground that they are ineffective. We may be simply dense about that, but we can't see it.

These legal questions may have to be determined in court. We feel it is unfortunate that in a year when maximum production is needed, the OPA up to this point has insisted on using a method of pricing which is of such highly doubtful legal validity.

I want to say one other thing. I understand that a subcommittee of the Canning Industry Advisory Committee has prepared and is about to submit to OPA a summary of all of these matters.

It is hoped that these industry views, founded on both knowledge and the desire to see fair and effective price control, will receive favorable consideration.

Under the circumstances, however, the Canning Industry must go on record with this Committee in insisting that the proposed compulsory use of these Government grades is unlawful.

You may ask me, I suppose, whether we are asking for an amendment on that point. The answer is no, we are not. We think the law is clear. We think the Congressional mandate is plain, and we have a situation here where the OPA is not following the Congressional mandate.

MR. KEAN. That is not peculiar.

MR. AUSTERN. You see, we are in a peculiar position. We labored and fought for proper price control while at the same time trying to produce canned foods. I think you gentlemen know the splendid record that has been made. It fell off slightly last year. I won't say, but it has been said, that it fell off because of the pricing difficulties. We know what the needs are for 1944. We think the pricing plan is fundamentally sound. We think that the pricing technique will be proper, except on this point—and we don't know, as Mr. Cummings suggested, whether this represents the OPA view, or whether there is some mysterious directive in back of this one that emanates from some other place. But we do know on this one they are flying right in the face of what this Committee did.

If there are any questions, I think Mr. Cummings and I can pass them to one another.

MR. MONRONEY. I believe in the early part of your testimony you expressed complete confidence in the men in the OPA canning section, and that they were doing a satisfactory job.

MR. AUSTERN. In the food price section; yes, sir.

MR. MONRONEY. And they understood the industry problems and the relations that exist in the industry?

MR. AUSTERN. Yes, sir.

MR. MONRONEY. Your principal objection, of course, seems to be on this relationship of standard brands to the AMA yardstick?

MR. AUSTERN. That is one of them.

MR. MONRONEY. That, as I gather it, is a procedural thing. My understanding of that Taft amendment, when we passed it, was to get away from Government grade labeling. That was what all the fuss and furor was about, and you would not attempt to lead the Committee to believe that any AMA grade would appear on any of these labels, would you?

MR. AUSTERN. That opens up a very interesting subject, particularly in the light of the interest now being expressed in the scope of Executive action. Let me tell you in about four sentences what the history is. The Taft amendment was added in the Senate,

and various gentlemen who are sitting on this very Committee sat in the conference and wrote in the report, and the House Managers presented to the Congress a report which clearly and explicitly explained what the Taft amendment was designed to do. I can say to you, sir, that if that report were the only thing before us today there would be no question that the Taft amendment was clearly intended to go beyond grade labeling.

What happened? About eight days later, the President of the United States, when he approved the bill, for the first time in the history of the United States in approving a bill, not in vetoing a bill, issued a statement. In that statement, which was signed by the President in approving the bill, he said that he thought the Taft amendment was ambiguous. He referred to some remarks, which were partially quoted, of Senator Taft in the Senate. He made no reference whatever to the conference report. He then said, "In signing this measure, here is what I think it means."

I don't know whether that is as well known as it should be. It is the first time to my knowledge that sort of thing ever was done, and it is, I think, on the Presidential statement of July 16, 1943, that the OPA lawyers are basing their views.

MR. MONRONEY. Of course, we only have the knowledge which we absorb, and the whole objection I got from my district on grade labeling was that it was an effort to destroy the brand and trade names, and I don't believe even your statement would lead the Congress or this Committee to believe that the so-called AMA yardstick, which absolutely does not appear on labels or in advertisements or anything else, would do that.

MR. AUSTERN. Well, sir, I would like to say that that subject, which you suggest was not considered with reference to the Taft amendment, was the subject of extensive Congressional hearings. At those Congressional hearings it was made clear that by the use of these Government grades and by the use of what are called regional flat prices—where they averaged out the prices in 23 States, and squeezed everybody into this illusory concept in 23 States—in other words, the use of the grade as a basis for pricing as distinguished from a basis for labeling—that subject, sir, was canvassed extensively before many Congressional committees. I submit to you that when Mr. Brown came to the Senate and said that he wanted some change made in what had been put in the appropriation act, the changes made in the Senate ended with this clause 4 of the Taft amendment, which says nothing about labeling, but which reads that "nothing in the law shall be construed as authorizing any order of the Administration fixing maximum prices for different commodities which are described in terms of specifications or standards"—that is pricing, not labeling—"unless such specifications or standards were prior to such order in general use in the trade or industry affected, or had previously been promulgated and their use lawfully required by another Government agency."

And more than that, in the very conference report on that bill, by the conference in which members of this Committee participated, there is a section discussing it. I won't take the time to read it, but it is House Report 697, which says clearly that they are talking about tying the price to the grade in addition to talking about labeling.

MR. MONRONEY. In that section which you read, wouldn't that be broad enough to cover the purchases by the Army, the Navy, Lend-lease, and all the other Government purchases? You wouldn't want the Committee to believe that has not been done on the AMA grade, would you?

MR. AUSTERN. I most certainly would. The buying by the Army is done on what is called Federal specifications. The language used in those Federal specifications follows in some respects, but is not identical with, the language of the AMA grades. What is being done, sir, is that the Army is using the Department of Agriculture grades to determine compliance with the Federal specifications on which the goods are being bought. On that same point—I said I didn't want to go into detail, because it is a practical subject relating to the canning industry—but let me say one other thing: The Army in its buying is not bound by the AMA grade, even where the AMA grade is used in the ceiling prices, and the OPA regulation itself, MPR 306, says that if the Army does not want to recognize the Grade C, and thinks that a product would be Grade B, except for something which the Army does not regard as important, but which the AMA grade does, the Army can still pay the bottom of the B price.

MR. MONRONEY. But it is still the AMA grade. You wouldn't want to tell the Committee the Army is not using that as a yardstick on which to base that. It is not a rigid thing, as I understand, but it is a yardstick which the Army uses.

MR. AUSTERN. If you want me to say that it is a rubber yardstick, and that the Army is not bound by it, and the Army does its pricing on its own specifications, and where the AMA grade gets in the way of the pricing, the OPA regulation says the Army is not bound by it, I will go along with that, but if you are suggesting the AMA grades are being widely used in the commercial buying and selling of canned foods, I am sorry to report that is not correct.

MR. MONRONEY. In your testimony a moment ago you said the specifications were modified slightly from the AMA grade——

MR. AUSTERN. How is that?

MR. MONRONEY. I understood you to say the AMA grades were used with slight modifications in the Army purchases.

MR. AUSTERN. No, I didn't mean that. There are separate Federal specifications.

MR. MONRONEY. But they are written around AMA grades to a certain extent, are they not?

MR. AUSTERN. To a certain extent, yes; completely, no.

MR. MONRONEY. Isn't that what is being proposed now; that they are not trying to take, for instance, the Richelieu brand of peaches or peas, and put a certain stamped grade on them; that a man has his own product, and he measures that against the AMA grade and then adjusts in that price bracket that he finds it in.

MR. AUSTERN. I think that is correct, but if that is not pricing against the AMA grades——

MR. MONRONEY. In that range. I don't think it is the intent of the AMA grade to be absolutely rigid. It is merely a yardstick on which the manufacturer can gauge whether his price is within the range that has been set up.

MR. AUSTERN. I wonder, sir, whether it is a yardstick which can. I think if you will put it that it is proposed to be used as a yardstick on which he must, but as to which a great many people doubt whether he can, measure his price, I would go along with you, but the plain fact of the matter is if they determine to find our price as against the Government grade, you have to price against the Government grade. You can write that in as many words as you want to, but there is where it comes out.

MR. MONRONEY. You are proposing to go to the normal commercial grades?

MR. AUSTERN. We are proposing to go to the normal commercial grades that have been used in the industry and understood in the industry, and where there are hundreds of people who know what those grades mean.

MR. MONRONEY. Have they ever been written out?

MR. AUSTERN. Those grades have no more been written out than the grades used in a great many other OPA regulations.

MR. MONRONEY. Wouldn't it be a little difficult to bring a prosecution under a system that has never been written out? I think you would find yourself in difficulty with the courts.

MR. AUSTERN. I would suggest in answer to that, when the pricing in 1942 was based on these commercial grades, OPA did fairly well, and if the OPA could now say the use of commercial grades is ineffective, when we can take the price indices on canned foods and show that price control in 1942, when they used commercial grades, was far better on canned foods than on all foods put together—we don't see why.

Of course, sir, when you say how can you understand something that is not written out, I submit to you that there are thousands of commodities where the trade grades are understood in the trade and are used every day in the year in buying and selling.

MR. MONRONEY. That is an entirely different proposition; you buy and sell and you take a chance on disposing of the goods, but when you are trying to write a regulation I think you are asking us to be very indefinite.

MR. AUSTERN. I say in answer to that, it did not have to be that way in 1942; it did not have to be that way in 1943. It doesn't have to be that way on coffee or on tea, on spices, on dried fruits, or on frozen fruits and vegetables—they are using unwritten commercial grades, understood in the trade, so that if you take one experienced in the trade and cut the can and say, "What is it, a Fancy, or a Choice," a man experienced in the trade can tell you.

That is what they are doing in all these other regulations.

If you are suggesting it is a legal impossibility to enforce a regulation on canned goods, as you do on other processed food commodities, we can't see it.

MR. MONRONEY. We are interested in knowing what is in the can, that is, I am, and you have to understand that, and I do not know how you are going to protect against quality deterioration from 1941 deliveries now unless you do have some yardstick you can go by which is fairly well standard.

MR. AUSTERN. Of course you appreciate the proposal is to have the AMA grade control at time of shipment, and I assume since you have gotten familiar with this thing, you know the AMA grade at the time of shipment from the cannery itself can go off from the time it is received after transit.

The rules of AMA appeals say that if a product has changed since the time of shipment they won't regrade it, and it has been reported to us—I can't say it is true but it has been reported to us—that the AMA has now announced that it will not permit goods which have been graded for the Army to be regraded again because they have had some very funny experiences with products graded by one grader and then later were graded by another grader who got different results.

MR. MONRONEY. You are saying the Government does grade. I thought you said a while ago that it did not grade?

MR. AUSTERN. I say the AMA grading service is used by the Army. It is merely whether Federal specifications are being complied with, but we have had many experiences over the years where products change.

To make that point simple, the grade that will control for pricing is the grade at the time the canner delivers the goods, and whether it is an AMA grade or a commercial grade, after those goods move four or five hundred miles, or if those goods are not examined for six months, or if those goods are stored in an overheated warehouse, it takes an experienced trade man to tell you what the grade was when it left the cannery.

And I submit to you further that an OPA inspector is not going to do that and an AMA inspector is not going to do that, because they consist largely of people who have been recently trained to grade.

The only people upon whom OPA can rely in enforcing this regulation—and we want it enforced—is an experienced broker or grocer, and we have suggested to the OPA that they use the members of the arbitration panels who are available and are willing to serve.

Those men can tell you whether a can is fancy or choice. Those men can tell you whether a can has changed since the time it left the factory to such a degree that at the time it left the factory it was a certain grade.

MR. MONRONEY. Does the Army buy more of fancy or choice or commercial, or do they run closer to the AMA grade?

MR. AUSTERN. I don't know whether I can answer that in volume, because I don't know, but I do know the Army has a proceeding which is called "except for"; in other words, this meets a certain federal specification except for something, and where it is an "except for" case then the Army buys on what they think the value is.

Do they use an inspector to buy? They do not. They have got the finest group of experienced people from the grocery industry, they have experienced buyers and sellers of canned foods, and they do a corking good job in procurement.

You are asking me, I think, and I would like to get to it, whether I think it is the "canned food pricing division in the OPA that is insisting on this thing." I don't know. As I suggested to you, it might be some directive from upstairs, I don't know. I suspect there is. I think the people who are insisting upon this are the same people who insisted on grade labeling.

And I want to say to you one other thing, that in talking with OPA, I have yet to find somebody who has actually sat down and read all through these AMA grades.

The AMA grading system is a thing like the weather; everybody talks about it but no one does anything about it, but I would like to find more than two people in OPA who have actually sat down and gone through them.

MR. MONRONEY. They probably have not gone through them entirely but they probably have studied their own particular products that they are handling.

MR. AUSTERN. I would submit that before you impose a regulation which the industry believes will produce bad prices and poor enforcement it would be desirable to sit down and go through this book of grades, and if the committee wants me to I will read you some of the grades.

MR. MONRONEY. That is highly technical and I do not believe this committee would be prepared to set themselves up as canning experts.

What per cent of the fruits are taken by the Army?

MR. AUSTERN. I am advised about 60 per cent.

MR. MONRONEY. And of the vegetable pack?

MR. AUSTERN. About 35 to 40 per cent.

MR. MONRONEY. Because of its rather close parallel to the AMA regulation then, do you not think a good many of the canners who are packing for the Army procurement would understand something about them?

MR. AUSTERN. No, sir, I do not, because the way that works in practice is this. The canner has a lot of goods. He is required by the War Food Administrator to set aside a certain portion of his pack, and incidentally, in speaking of that, I would like to tell you that the reservation order which requires the canner to set aside his pack talks about a lot of commercial grades that are not mentioned in the AMA grades. They talk about top standards. What happens is this: The canner puts aside a lot of goods.

The Army then sends an inspector around, and if the Army accepts those goods, then the Army says, "We will take them."

The contract is written, the goods are segregated, and the canner keeps them until the Army wants them.

MR. MONRONEY. What per cent of the pack would be radically changed by this AMA grading?

MR. CUMMING. The entire civilian pack.

MR. MONRONEY. It would raise prices or lower prices of the whole thing?

MR. CUMMING. I wouldn't say it would lower or raise them. It will introduce inaccuracy into the prices of the entire civilian pack. That is our belief.

MR. MONRONEY. You do not believe that about four-sixths of the pack would probably fall within those brackets and only the lower two-sixths would be for an adjustment under the yardstick.

MR. AUSTERN. If you are suggesting there will be a good many clear cases, and then other cases which are borderline, I will agree with you, and I can also assure you from some twelve years study of the problem that in the borderline cases, if we want to prosecute a man who is putting the wrong label on them, we would much rather prosecute on the basis of the commercial grade with a witness that is experienced with canned goods, than under this mumbo-jumbo, with some inspector who has never dealt in the products,

and who would make a mighty poor witness for enforcement purposes.

In terms of enforcement, we want effective enforcement.

MR. MONRONEY. I still can not see the objection, since it is not on the can, there is no label, and there is only a reference standard to be used in helping the manufacturer to determine, I can not see where this comes under all the furore that grade labeling kicked up at all.

MR. AUSTERN. If that were true we would not be taking up the time of the committee; there would not be groups of men coming from forty States in America, if that were true. I assure you it is not.

MR. MONRONEY. I think you determined the price on a Richelieu can, or whatever canned goods you are selling, at the start of the season, with reference to where it happens to fall against the yardstick, and then it gets into the price bracket, and you go on absolutely undisturbed.

MR. AUSTERN. If that were true, then we certainly have been wasting a great many man hours and we don't understand the problem, and perhaps these 30 men on the Industry Advisory Committee, who have spent their lives in the industry, don't understand their own subjects.

MR. MONRONEY. You say the OPA understands the canning problem also.

MR. AUSTERN. I say the OPA pricing officials do, but as I have suggested, we do not know, but I do not believe, that this suggestion originally emanated from those gentlemen.

I think people in the OPA are not wholly free agents under the administrative set-up. Occasionally their policies are dictated to them, and if this committee would care to inquire whether there is a directive and who issued it, and whether the fellow who issued it knows anything about the problem, then I think we would be in better position to discuss where the thing comes from.

MR. MONRONEY. Where do you think it comes from?

MR. AUSTERN. I do not know.

MR. MONRONEY. I have not seen any great, mysterious force working in any pricing thing; it is mostly all industry business in an effort to hold the line.

MR. AUSTERN. Where would you think the opinion as to what would or would not be an enforceable price regulation would come from?

MR. MONRONEY. I think it would originate with your industry branch and come on up through Mr. Bowles.

MR. AUSTERN. I think it would be interesting if you would look into that and find whether it is not the opinion of somebody else, somebody in the Legal Division, or somebody in Judge Vinson's division?

MR. MONRONEY. Whom do you think?

MR. AUSTERN. I do not know. I do not know and I would rather not be in the position of guessing.

MR. MONRONEY. I think if we are going to infer and insinuate——

MR. WOLCOTT. The law very distinctly says that they don't place these ceilings without consultation with the War Food Administration, and in the case of dispute then Judge Vinson settles it.

MR. AUSTERN. I think you will find that Executive Order No. 9250 gives the Director of Economic Stabilization a very high degree of control. That is the order that establishes the Director of Economic Stabilization. That is not the Hold the Line Order. It is the order which organized Judge Vinson's department.

MR. CRAWFORD. Mr. Chairman, let me ask a question.

THE CHAIRMAN. Mr. Crawford.

MR. CRAWFORD. I want to ask you one question about the inspection.

Suppose the packer puts up a lot of canned peas, or corn, and the inspector comes along and makes his inspection, and accepts it, and a contract is written, and the protestor warehouses those goods, say for 9 months, and then somebody comes along and makes a further inspection, and a serious case of thermophilic bacteria or flat sours has developed, who assumes that?

MR. AUSTERN. You must have some canners in your district, because you used a very technical term.

The answer is that the original inspection made prevails. If there are what we call swells, or spoilage, the original army procurement method provided you had to replace the goods.

The present method is the commercial method. In ordinary buying and selling that problem is settled in this fashion: There is an allowance of one-fourth of one per cent in lieu of normal swells.

In November, 1941, when the Army went from a retail buyer to a wholesale buyer of canned foods, the Army adopted, unlike some people in OPA, the commercial practice under which the Army gets the same one-fourth of one per cent allowance in lieu of normal swells.

If you have these thermophilic bacteria and they infected the whole pack, that would not be a normal swell, and the Army would make a reclamation claim, but ordinarily if a few cans were bad, that is covered by the deduction of one-fourth of one per cent.

* * *

MR. CUMMING. I think you are referring to what we know in the industry as flat sours.

MR. CRAWFORD. I said flat sours and thermophilic bacteria; those are the terms I used.

MR. CUMMING. That is right.

MR. CRAWFORD. I am not talking about your swells.

MR. CUMMING. Your question is, how is an adjustment made when that appears months after the goods were originally inspected?

MR. CRAWFORD. Yes, sir.

MR. CUMMING. In ordinary commercial practice it is settled by adjustment in some way or another. An effort is made to try and determine responsibility for it and then settle it by adjustment.

MR. CRAWFORD. But the inspector can not discover it, if he makes his inspection say within a few days after the pack, can he?

MR. CUMMING. That is correct.

MR. CRAWFORD. That is what I want to know, because my question came up in respect to Mr. Monroney's question with respect to inspection.

THE CHAIRMAN. Have you had any occasion to practice in the Emergency Court of Appeals?

MR. AUSTERN. No, sir. My experience has been confined to the protest field. We never got to the point of ever getting to the Emergency Court of Appeals.

THE CHAIRMAN. Has there been delay in determining the issues in the Emergency Court of Appeals?

MR. AUSTERN. I don't know. I think that could be ascertained by comparing the time of the filing of the appeal with the date of the decision. It is a very simple inquiry and I would be glad to make it, but there haven't been a great many cases in the Emergency Court of Appeals, as you know, and the comparison of the dates on which they were filed with the dates on which they were decided would give you that.

THE CHAIRMAN. How long does it take you to arrive at a decision before the OPA on a protest?

MR. AUSTERN. I know of one case in which the protest was filed in July, 1942; decision was rendered in August, 1943.

I know of several protests which have now become moot.

I think of one canner in Indiana who filed a protest and the protest was pending and they asked for further information, and now about a month ago he reached the point where he had to sell his entire pack, so he had to throw in the protest.

THE CHAIRMAN. Those are exceptional cases you mention, are they not? That is not the ordinary course of procedure.

MR. AUSTERN. I would like to say this: I think the problem, of course, has been one of short personnel in the OPA, but I know of no protest, sir, and I have had to do with and have known about some dozens, at least—I know of no protest in which any decision was made, I think I am correct in saying, in less than three months.

THE CHAIRMAN. And no appeal can be taken to the Emergency Court of Appeals until final decision is made by the OPA?

MR. AUSTERN. That is correct, and that is why in the amendment which we suggested, we suggest that if the OPA Administrator did not act within a certain number of days that the appeal may be considered as denied, because in these seasonal industries, Mr. Chairman, if you put up your pack in June, and the price comes out we will say in June, and you are given a certain length of time to protest, suppose it takes two weeks to prepare the protest, and you file the protest, then five or six months roll around—you can't hold your seasonal pack forever. You have to sell it. And there always comes a point where either because your loans are called, or you don't feel secure, or where you have to clear out the warehouse, protest or no protest, the goods have to be sold. That is why we are interested in expediting the protest procedure.

* * *

MR. BROWN. Can the government buy canned goods cheaper than civilians?

MR. AUSTERN. I would say this: Superficially the government does buy at 96 per cent of the civilian ceiling. Having said that, I hope not to confuse you by saying this:

The subsidy which is given for civilian sales is not given for government sales, and when you add the subsidy back, the Army pays more than the consumer does. In the same fashion, as Mr. Cumming tells you, in 1942 the OPA allowed a certain percentage to reflect increased labor costs, and the Army paid those, but those were not allowed in the civilian price, so that for bookkeeping purposes you can say that the Army is buying at 96 per cent of what the civilians are paying.

(At this point Mr. Austern was questioned extensively about the proposed changes in OPA procedure, principally on the proposed amendment that good faith should be a defense in a treble damage suit.)

MR. WOLCOTT. We did the best we could to clarify this law, but so far there have been about 300 suggestions as to how we should clarify it. What I am trying to do is to find some broad language that will tell the Administrator that Congress meant what it said. I think the Administrator and his attorney, who sat with us in the conference and listened to the debate, know what we meant when we wrote this Act. Dave Ginsburg sat in the conferences in the House and Senate when this Act was written, where this Act was thoroughly discussed, and nobody is able to tell me that Dave Ginsberg doesn't know what this Committee intended when it passed this Act. We can't hit those fellows over the head with a sledgehammer and tell them to do what we intended.

That is just one thing in this Act. I could name you 28 others. I presume there is an obligation on our part to clarify it. We have specific provisions in here where we have said that they shall do certain things under certain conditions, but they don't do them. How are we going to make them do them? How can we clarify those things? Shall we say, "We reiterate it is our intention, so please abide by the Act?" That is precisely the difficulty that concerns us with respect to this.

MR. AUSTERN. That is also the difficulty that confronts us with respect to the Taft Amendment. We thought that amendment was very plain on its face. The only people under our system of Government who can state whether an agency is complying with the plain Congressional mandates are the courts, and that is why we are somewhat embarrassed, and if I have created the impression that we are in conflict, I want to dissipate it. We are not in conflict.

MR. WOLCOTT. Have you ever taken the Taft Amendment into court?

MR. AUSTERN. It has never gone to court.

MR. WOLCOTT. Is not the first thing the court looks to for Congressional intent the committee reports of Congress?

MR. AUSTERN. I find myself embarrassed in making a lot of generalizations on which many lawyers might differ. My understanding is that if the plain words of a statute are plain the court looks no further.

MR. WOLCOTT. That is right, but if they are ambiguous and subject to interpretation, then they next look to the committee report as to the intent of Congress. If that doesn't clarify it, they can then go to the debates. If that doesn't clarify it, they can go to the committee hearings. Anyway, they can take into consideration everything that went on. What more can we do?

MR. AUSTERN. We don't suggest there is anything to do. We simply felt it was our duty to point this out. You have very splendidly epitomized about 26 Supreme Court cases on statutory interpretation. We don't think that you have to go that far. We think the Taft Amendment is plain. We are confronted with a situation where a conflict has been created in a fashion we have never seen before. We don't know how you can change that. We thought it our duty to call your attention to this situation, which we think may have serious complications in 1944. But having said it, we are not recommending that you change the law on that point.

MR. WOLCOTT. This section 2(h) we have had so much trouble with, which says that the powers granted under that section should not be used to operate to change business practices, and so forth. We put that in for a definite purpose. We thought that was very clear.

MR. AUSTERN. It didn't work on grade labeling, and in the conference report to which I have referred the House Managers said that 2(h) didn't do the job, hence 2(j) was written in.

MR. WOLCOTT. They put that in to clarify it. Don't you think perhaps if we authorized the aggrieved party to review these grievances in the regularly constituted courts, and clarified this language so as not to limit too much the court in the consideration of the Act, we would have taken a pretty long step toward at least making it possible for the court to determine legislative intent?

MR. AUSTERN. If you mean that everybody in America should have the right to go to the District Courts on the question of validity, we do not agree.

MR. WOLCOTT. No, no.

MR. AUSTERN. But if you mean a man who questions the validity may go to the Circuit Court of Appeals in his own district, I reported that the committee thought that was right.

MR. WOLCOTT. I don't think anybody contemplates giving the District Court authority to enjoin the OPA from the operation of this Act. I would like to make that clear now. Mr. Bowles spent several hours on this objecting to the fact that somebody was offering an amendment authorizing the District Court of the United States to enjoin him from functioning, and I don't think that is in anybody's mind. The only suggestion which has been made to me on appeals—and as a matter of fact, I introduced it as an amendment and it was adopted in this bill when the bill was first before the House. It didn't have strength enough in the Senate to make it stick. Then I reintroduced it as a bill last May—that was when they had exhausted the remedy within the Price Administration, then they would appeal directly from that decision to the Circuit Court of Appeals, and you could take up your case by certiorari. That would not hamstring the operation of the Act, would it?

MR. AUSTERN. I don't think so. As you know, since you sat in these hearings, that is a question of great controversy, but it has been the observation of those who have watched the operation of the Supreme Court that it is very zealous to take cases upon certiorari where that is necessary.

MR. WOLCOTT. I hoped in offering that amendment to provide for court review; that it would have a psychological effect upon the issuing of a regulation before you ever got to court.

MR. AUSTERN. We desire to produce the canned goods the country needs and sell them at a fair price, and we are not interested in litigating with anybody on anything.

The House Banking and Currency Committee continued its hearings on the extension of the Emergency Price Control Act by hearing on May 1, testimony of Russell Brown, General Counsel for the Independent Petroleum Association of America, and of representatives of the fur industry. All

witnesses favored extension of the Price Control Act, but Mr. Brown contended that certain changes were necessary to obtain maximum production of petroleum. He directed the majority of his criticisms of the OPA administration to the failure to make price adjustments to compensate for increased costs, the failure to consult with the industry, and delays and restrictions on appeals from prices established by the OPA.

The representatives of the fur industry also complained of the refusal of OPA to make price adjustments for increased costs and suggested that furs, being luxuries, should be removed from price control.

1944 SPINACH SUPPORT PRICES

(Concluded from page 8195)

ning of the crop grown in nearby areas. As a result of these meetings spinach canners agreed to make every effort to operate at full capacity during the remainder of the season with the understanding that a support price for spinach cut above the crown would be announced. Because of the shortage of trimming labor in Baltimore, canners stated that it is necessary to have the spinach delivered to them cut above the crown in order to enable them to handle the crop.

Support prices on spinach for canning apply to acreage under contract with certified canners and have been designated by WFA for the 1944 season as follows: (There are no comparable figures for last year since no price support program on spinach was in effect in 1943)

New York: $34 per ton cut *above* the crown (Breakdown by grades: $35 for US No. 1; $25 on US No. 2 and $10 on US No. 3).

Northern Pennsylvania (in the counties of Erie, Crawford, Mercer, Venango, Warren, Forest, McKean, Potter, Tioga, Bradford, Susquehanna and Wayne): $34 per ton cut *above* the crown.

Virginia, Maryland, Delaware, Tennessee, New Jersey, and the rest of Pennsylvania: $70 per ton cut *below* the crown.

Delivered Baltimore city canners from Maryland, Delaware, Virginia, New Jersey, and the rest of Pennsylvania: $100 per ton cut *above* the crown and trimmed.

Wisconsin, Illinois and Indiana: $32 per ton cut *above* the crown.

Texas, Oklahoma, Arkansas, Louisiana and Mississippi: $70 per ton cut *above* the crown.

California: $22.50 per ton in the field, *uncut*.

Prices for other States have not been determined but such prices will be announced locally by the State Agricultural Conservation Committees at an early date. Unless otherwise specified, this schedule of prices is on a field run basis and refers to spinach for canning and, except for California, includes delivery to the processor's plant.

The support prices set by WFA are those which canners must agree to contract with growers in 1944 in order to become eligible for protection under the support program for the canned product. In view of the lateness of the season, WFA stated that many growers and processors may find it difficult to make contracts; nevertheless, support prices will serve as the basis for contracting and certification of canners. As previously defined, a certified canner is one who has contracted with growers at not less than announced support prices or who has attempted to contract to the satisfaction of the State Agricultural Conservation Committee for acreage sufficient to operate the plant at substantially its capacity.

Further details of the 1944 support price program for vegetables for canning and for canned vegetables were announced by the WFA on February 18 and March 4. (These were published in the INFORMATION LETTERS for February 19 and March 11.) Under this program WFA will accept all quantities of the 1944 pack of canned snap beans, sweet corn, green peas, beets, tomatoes, tomato juice, tomato pulp, tomato paste, carrots, lima beans, and spinach offered by certified canners at levels equivalent to 86½ per cent of the canners' gross civilian prices (approximately 90 per cent of net civilian ceilings).

Appropriate adjustments in individual canners' support levels in relation to area averages and for grade differentials applicable to formula maximum priced items will be announced by WFA after Office of Price Administration ceilings are issued. Special styles and Fancy packs will be accepted at price levels applicable to ordinary commercial packs. The support level for certified canners who purchase raw material on the open market will be adjusted for any raw product costs below the support levels.

Spaghetti Sauces Now Rationed

Spaghetti sauces, labeled as such and containing fats and mixed vegetables, have been added to the rationed list of foods by Amendment No. 28 to Ration Order No. 13, under the heading "Vegetables and Purees." This change became effective April 30.

To Allow for Asparagus Costs

It is understood that the Office of Price Administration will shortly release a statement to the effect that it will take into consideration, in establishing canned asparagus ceilings, increased costs to canners and freezers of the raw product. The ceilings will reflect the increase of ½ cent per pound over last year's prices which has been granted to asparagus growers in all States except California by the Director of Economic Stabilization on the recommendation of the War Food Administration.

Explanation of Pickle Meeting

The meeting of the National Pickle Packers Association, scheduled for May 9 and 10 at the Hotel New Yorker, New York City, is to be a regional meeting. The annual mid-year meeting of this Association will be held June 15 at the Stevens Hotel, Chicago.

It was erroneously reported in last week's INFORMATION LETTER that the May 9 and 10 meeting was the annual mid-year meeting and that it would be held in Chicago.

Refrigerator Car Conservation

Conservation of refrigerator car use by quicker loading and unloading has been called for by the War Food Administration for the months immediately ahead. An appeal has been made to shippers and receivers of perishable foodstuffs. Present indications point to an increase in shipping of 10 per cent this year over record refrigerator car shipments last year, the WFA release states. Increased production of fruits and vegetables and declining marketings by truck are largely responsible.

Few "retired" refrigerator cars have been replaced because of priorities and shortages of critical materials, and although limited construction of new cars is planned, few will be available until late this year. Use of plain or ventilated boxcars for shipment of semiperishables is urged whenever possible. Shippers of fresh fruits and vegetables, in the past, have been permitted several reconsignments en route, which has assisted in distribution and avoidance of market gluts. Recently, allowable reconsignments have been reduced to conserve equipment. Cooperation in freeing all cars quickly not only will insure safe handling of perishables but also may avoid more stringent regulations, it was stated.